

SUBSTITUTE DECLARATION

WE, Seymour F. Trager, a citizen of the United States residing at 14 Sherwood Drive, Plainview, New York 11803, and Victoria S. Chylinski, a citizen of England residing at 11 Peghouse Rise, Slad Road, Stroud, Glos., England, hereby declare:

THAT, we believe ourselves to be the original, first and joint inventors of the subject matter described and claimed in United States Letters Patent No. 4,540,568 for an INJECTIONABLE VISCO-ELASTIC OPHTHALMIC GEL, granted on September 10, 1985, and in this application for reissue thereof;

THAT, we solicit a reissue patent of said United States Letters Patent No. 4,540,568 and pray that we may be allowed to surrender said Letters Patent;

THAT, we have reviewed and understand the contents of the foregoing specification including the claims;

THAT, we acknowledge our duty to disclose information of which we are aware which is material to the Examination of this application in accordance with 37 C.F.R. 1.56(a);

THAT, we verily believe said United States Letters Patent No. 4,540,568 to be wholly or partially inoperative by reason of claiming less than we had a right to claim in the patent;

THAT, although the invention disclosed in the patent is that of an injectionable ophthalmic visco elastic gel and the use thereof during ophthalmic surgical procedures to prevent damage to ocular tissue, claims directed to such use were inadvertently omitted, resulting in our claiming less than we had a right to claim;

THAT, this omission was not brought to light during the preparation and prosecution of the parent application, Serial No. 434,412, filed October 14, 1982 (abandoned) or Serial No. 625,249, filed June 27, 1984, which application matured into the patent for which reissue is sought;

THAT, this omission was only brought to light when we became involved in the preparation of a companion application in which claims directed to a method of use of a particular composition were proposed and realized that method claim protection could have and should have been sought in Letters Patent No. 4,540,568;

THAT, we have carefully reviewed our records for any written documentation of the precise date of our discovery of the omission and have been unable to locate such documentation;

THAT, we believe that the discovery of the omission occurred in the late spring of 1987;

THAT, the failure to include such method claims arose through inadvertence and without deceptive intent, due to our limited knowledge of the United States patent procurement procedure;

THAT, in accordance with the discovery of such omission as described hereinabove, the underclaiming which renders the said United States Letters Patent No. 4,540,568 wholly or partially inoperative is proposed to be corrected by the addition of method claims; and

THAT, we hereby declare that all statements made in this declaration of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing therefrom.

Nov. 28, 1988  
DATE

Dec. 2nd 1988  
DATE

Seymour F. Trager  
Seymour F. Trager

Victoria S. Chylinski  
Victoria S. Chylinski